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Monoluxury Sdn Bhd lwn Willem Pomp

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MAHKAMAH TINGGI (TEMERLOH) — RAYUAN SIVIL NO CB-12BNCVC-2–10 TAHUN 2022
ROSLAN MAT NOR H
16 FEBRUARI 2024

C

Kontrak — Kontrak Pekerjaan — Pemecahan — Responden meninggalkan pekerjaannya dengan perayu secara tiba-tiba — Ketiadaan terma penamatan kontrak oleh pekerja dalam kontrak pekerjaan antara perayu dan responden — Sama ada perayu mempunyai remedi atau boleh mendapatkan ganti rugi daripada responden

D

Ini adalah rayuan terhadap keputusan yang dibuat oleh hakim mahkamah sesyen ('HMS') terhadap tuntutan yang berkaitan dengan satu kontrak yang dikatakan telah wujud antara perayu ('plaintif') sebagai majikan dan responden ('defendan') sebagai pekerja yang dinamakan sebagai kontrak pekerjaan. Defendan meninggalkan pekerjaannya secara tiba-tiba apabila mendapati plaintif dikatakan melakukan tindakan-tindakan yang tidak wajar kepada pekerja-pekerja lain. HMS dalam menolak tuntutan plaintif terhadap defendan menyatakan bahawa disebabkan tiadanya terma yang jelas dalam kontrak pekerjaan yang menyatakan tatacara penamatan kontrak oleh plaintif maka tindakan defendan meninggalkan pekerjaannya tidak membolehkan diputuskan terdapatnya pemecahan kontrak oleh defendan dan dengan itu plaintif tidak mempunyai remedi atau boleh mendapatkan ganti rugi daripada defendan. Oleh itu, rayuan ini.

E

F

Diputuskan, membenarkan sebahagian rayuan:

G

(1) Perjanjian pekerjaan antara plaintif dan defendan menunjukkan terdapat terma penamatan kontrak oleh majikan. Namun tiada peruntukan yang sama terhadap pekerja. Pekerja boleh menamatkan perkhidmatan tanpa sebarang notis atau maklumat berkenaan dengan penamatan kontrak tersebut kepada majikan. Walau bagaimanapun dalam undang-undang kontrak terdapat dua bentuk terma kontrak iaitu terma nyata (*express term*) dan terma tersirat (*implied term*). Ketiadaan terma berkenaan penamatan kontrak pekerjaan oleh pekerja dalam kes ini mewajarkan terma tersirat digunakan kerana adalah sesuatu yang tidak munasabah untuk terma penamatan hanya dikenakan kepada majikan (lihat perenggan 20–21 & 32).

H

I

(2) Di dalam kontrak pekerjaan tersebut terdapat peruntukan fasal 7 bahawa pekerja boleh menamatkan kontrak pekerjaan tersebut sebelum tamat

tempoh sekiranya terdapat tindakan-tindakan majikan yang tidak betul. Notis satu bulan perlu diberi kepada majikan untuk memperbaiki perkara yang tidak betul tersebut. Selepas tempoh satu bulan tersebut luput maka bolehlah pekerja meninggalkan pekerjaan tersebut walaupun tempoh masa kontrak pekerjaan tersebut masih belum luput. Namun begitu tiada keterangan yang menunjukkan: (a) tempoh satu bulan telah diberikan kepada plaintif untuk memperbetulkan kesilapan-kesilapan tersebut; dan (b) defendan mengambil tindakan dengan melaporkan tindakan-tindakan yang tidak betul oleh plaintif kepada pihak berkuasa untuk diambil tindakan mengikut undang-undang (lihat perenggan 33–34).

(3) Peranan defendan sebagai pekerja di plaintif adalah penting. Tindakan defendan meninggalkan pekerjaan di plaintif secara tiba-tiba telah menjejaskan perniagaan plaintif. Tindakan defendan menamatkan kontrak pekerjaan tersebut secara tiba-tiba adalah suatu tindakan yang telah berlawanan dengan terma tersirat dalam kontrak pekerjaan tersebut. Adalah wajar untuk menentukan ganti rugi bagi pemecahan kontrak tersebut. Kadar sebanyak RM105,000 adalah adil dan munasabah untuk diberikan kepada plaintif (lihat perenggan 35 & 39–40).

(4) Berkenaan dengan tuntutan ganti rugi kehilangan peralatan dan tuntutan-tuntutan lain, HMS telah mempertimbangkan dengan sewajarnya dan berpuas hati bahawa plaintif tidak dapat membuktikannya di mahkamah. Tiada alasan untuk campur tangan dengan dapatan berkenaan perkara-perkara tersebut (lihat perenggan 41).

[English summary

This was an appeal against a decision made by the session court judge ('SCJ') against a claim related to a contract that was said to have existed between the appellant ('plaintiff') as an employer and the respondent ('defendant') as an employee named as an employment contract. The defendant left his job suddenly when he found out that the plaintiff was allegedly doing inappropriate actions to other employees. The SCJ in rejecting the plaintiff's claim against the defendant stated that due to the absence of clear terms in the employment contract stating the procedure for the termination of the contract by the plaintiff, the defendant's action of leaving his job did not allow it to be decided that there was a breach of contract by the defendant and thus the plaintiff had no remedy or could seek damages from defendant. Hence, this appeal.

Held, allowing part of the appeal:

(1) The employment agreement between the plaintiff and the defendant

showed that there was a term of termination of the contract by the employer. However, there was no similar provision for employees. The employee could terminate the service without any notice or information regarding the termination of the contract to the employer. However, in contract law there were two forms of contract terms, namely express term and implied term. The absence of a term regarding the termination of the employment contract by the employee in this case justified the use of an implied term as it was unreasonable for the term of termination to apply only to the employer (see paras 20–21 & 32).

(2) In the employment contract there was a provision in cl 7 that the employee could terminate the employment contract before the end of the term if there were improper actions of the employer. One month's notice must be given to the employer to amend the incorrect matter. After the one-month period expired, the employee may leave the job even if the period of the employment contract had not yet expired. However, there was no evidence to show that: (a) a period of one month was given to the plaintiff to amend the errors; and (b) the defendant took action by reporting the plaintiff's improper actions to the authorities for legal action to be taken (see paras 33–34).

(3) The role of the defendant as an employee of the plaintiff was important. The defendant's sudden job departure from the plaintiff had affected the plaintiff's business. The action of the defendant to terminate the employment contract suddenly was an action that had been contrary to the terms implied in the employment contract. It was appropriate to determine damages for breach of contract. A rate of RM105,000 was fair and reasonable to be awarded to the plaintiff (see paras 35 & 39–40).

(4) Regarding the claim for damages for loss of equipment and other claims, the SCJ had duly considered and was satisfied that the plaintiff could not prove it in court. There was no reason to interfere with the findings on those matters (see para 41).]

Kes-kes yang dirujuk

Attorney General of Belize and others v Belize Telecom Ltd and another [2009] 1 WLR 1988, PC (dirujuk)

Barton v Morris and another (in place of Gwyn Jones, decd) [2023] AC 684, MA (dirujuk)

Dr A Dutt v Assunta Hospital [1981] 1 MLJ 304, MP (dirujuk)

Geys v Société Générale, London Branch [2013] 1 AC 523, MA (dirujuk)

Government of Malaysia v Zainal bin Hashim [1977] 2 MLJ 254b, MP (dirujuk)

Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369, MP (dirujuk)

Inchcape Malaysia Holdings Bhd v RB Gray & Anor [1985] 2 MLJ 297, MA (dirujuk)
Johnson v Unisys Ltd [2003] 1 AC 518, HL (dirujuk)
Majlis Perbandaran Pulau Pinang v Lim Soo Seng [1991] 1 MLJ 162, MA (dirujuk)
Mahmud v BCCI SA (in liq); Malik v BCCI SA (in liq) [1998] AC 20, HL (dirujuk)
Mary Colete John v South East Asia Insurance Bhd [2010] 6 MLJ 733, MP (dirujuk)
Pasuma Pharmacal Corpn v Mcalister & Co Ltd [1965] 1 MLJ 221, MP (dirujuk)
Quilter v Mapleson (1882) 9 QBD 672, MR (dirujuk)
Sababumi (Sandakan) Sdn Bhd v Datuk Yap Pak Leong [1998] 3 MLJ 151, MP (diikut)
Sumbangan Aneka Sdn Bhd v KNK Development Sdn Bhd & Ors [2021] 4 MLJ 514, MP (dirujuk)
UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor [2018] supp MLJ 363; [2010] 9 CLJ 785, MP (dirujuk)

Undang-undang yang dirujuk

Akta Kerja 1955
Akta Kontrak 1950
Akta Mahkamah Kehakiman 1964 s 29
Akta Perhubungan Perusahaan 1967
Kaedah-Kaedah Mahkamah 2012 A 55 k 2

A Onn (Alysha Onn bersamanya) (Onn & Partners) bagi pihak perayu.
Gandhi a/l Palanisamy (Nurul Syahida bt Hamssin bersamanya) (Gandhi & Assoc) bagi pihak responden.

Roslan Mat Nor H:

PENDAHULUAN

[1] Ini adalah rayuan terhadap keputusan yang dibuat oleh hakim mahkamah sesyen terhadap tuntutan yang berkaitan dengan satu kontrak yang dikatakan telah wujud antara perayu/plaintif dan defendan/responden yang dinamakan sebagai kontrak pekerjaan (*employment contract*). Tuntutan ini telah ditolak oleh hakim mahkamah sesyen. Hakim mahkamah sesyen juga telah menolak tuntutan balas yang difailkan oleh pihak defendan/responden dalam kes ini untuk tindakan fitnah terhadap perayu/plaintif. Hakim mahkamah sesyen juga telah menolak tuntutan-tuntutan lain yang berkaitan dengan ganti rugi berkaitan dengan kehilangan beberapa bahan pertanian

ekoran daripada tindakan yang dikatakan telah dilakukan oleh pihak defendan/responden dalam kes ini.

[2] Dalam kes ini pihak-pihak akan dirujuk sebagaimana kedudukan di mahkamah sesyen iaitu perayu adalah plaintif dan responden adalah defendan.

[3] Penolakan ganti rugi itu dapat difahami kerana hakim mahkamah sesyen berpandangan tiada asas untuk tuntutan plaintif terhadap pihak defendan yang menyebabkan tuntutan ganti rugi lain berkaitan dengan insiden yang dikatakan dilakukan oleh defendan juga telah ditolak oleh hakim mahkamah sesyen.

MAHKAMAH RAYUAN TIDAK BOLEH SEWENANG-WENANGNYA CAMPUR TANGAN DALAM KEPUTUSAN DAN DAPATAN HAKIM BICARA

[4] Adalah jelas dan nyata bahawa mahkamah yang mendengar rayuan adalah tidak sewajarnya mengganggu dapatan yang telah dibuat oleh hakim bicara. Ini adalah disebabkan hakim bicara mempunyai peluang dan kebebasan untuk melihat saksi-saksi dan meneliti keterangan saksi-saksi dan juga dokumen yang dikemukakan secara lebih terperinci. Perkara ini telah dinyatakan sebagai ingatan di dalam kes *UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2018] supp MLJ 363; [2010] 9 CLJ 785 di mana Mahkamah Persekutuan menyatakan di ms 375 (MLJ); ms 800 (CLJ) seperti berikut:

> It is well settled law that an appellate court will not generally speaking, intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. A plainly wrong decision happens when the trial court is guilty of no or insufficient judicial appreciation of evidence (see *Chow Yee Wah & Anor v Choo Ah Pat* [1978] 2 MLJ 41b; [1978] 1 LNS 32; *Watt or Thomas v Thomas* [1947] AC 484 and *Gan Yook Chin & Anor v Lee Ing Chin & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309).

[5] Mahkamah tidak bercadang untuk membincangkan secara mendalam berkenaan perkara ini disebabkan ia merupakan undang-undang yang telah mantap. Mahkamah-mahkamah atasan telah menjelaskan setakat manakah hakim yang mendengar rayuan boleh campur tangan dalam dapatan hakim bicara. Ia tidak wajar dilakukan melainkan terdapat keadaan di mana keputusan tersebut dibuat berdasarkan kepada sesuatu yang jelas bercanggah dengan keterangan yang dikemukakan atau prinsip undang-undang yang telah mantap.

A PEMAKAIAN AKTA KERJA 1955

[6] Penelitian kepada nota keterangan, alasan penghakiman dan hujahan pihak-pihak semasa perbicaraan di mahkamah sesyen adalah didapati bahawa isu pemakaian Akta Kerja 1955 tidak ditimbulkan. Oleh itu hakim mahkamah sesyen tidak mempunyai peluang untuk memutuskan isu berkenaan dengan pemakaian Akta Kerja 1955 tersebut. Namun demikian pemerhatian kepada kontrak pekerjaan di antara plaintif dan defendan terdapat frasa yang dinyatakan seperti berikut:

> 9. The Employer and the Employee shall read and fully understand this Employer-Employee Contract and certify that the terms and condition together with the application constitute the entire agreement.
>
> The Employer and the Employee understand that the terms and conditions Favorable to the Employer and Employee, which are not mentioned in this Contract and are provided by the Laws of the Country of employment shall apply and be a part of the Contract.

[7] Perjanjian tersebut juga memperuntukkan tatacara penamatan kontrak pekerjaan yang boleh dilakukan oleh perayu seperti berikut:

> 7. Termination of Employment:
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> The Company may terminate with immediate effect this Agreement upon occurrence of one or more of the following reasons on 3 separate occasions and after having given 2 previous warnings in writing to the Employee:
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> – The neglect, malfeasance, nonfeasance, or other conduct of the Employee in the performance of the services contemplated by the Agreement which, in the reasonable judgement of the Company, is detrimental to the best interest of the Company.
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> – Any intentional dishonesty by the Employee as determined in the reasonable judgement of the Company.
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> – Found to be inciting disharmony or otherwise, resulting in any conflict or ill feeling between the Company and its employees.
>
> In the event of termination, within a period of 2 years from the start of this Agreement the Company will have the right to deduct the costs of relocation from Mexico/Canada to Malaysia paid by the Company.
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> The Company also has the right to terminate this Agreement if the Government of Malaysia revoke or fail to extend a permit of Employment for the Employee to carry out his duties for the Company in Malaysia.
>
> The Employee may only terminate this contract prematurely if the Company should fail to carry out the stated conditions in this Contract and only by stating in writing to the Company those condition(s) at fault and allowing the Company a 1 month period to rectify the fault. In the event the Company fails to rectify the fault then the Employee has the right to leave and claim all monies outstanding

owed to the Employee by the Company up to the date of termination of work on the Farm plus an air-ticket to return to Canada.

[8] Ia mencadangkan bahawa peruntukan-peruntukan undang-undang pekerjaan adalah perlu dirujuk dalam menentukan pertikaian di antara plaintif dan defendan dalam kes ini. Adalah didapati bahawa fasal 9 itu tidak secara khusus menyatakan bahawa Akta Kerja 1955 perlu dirujuk. Apa yang dinyatakan hanyalah undang-undang yang berkuatkuasa berkaitan dengan pekerjaan.

[9] Oleh itu adalah tidak wajar dan tidak adil untuk mahkamah ini membuat pemerhatian dan memutuskan kes ini berdasarkan kepada perkara yang tidak dibangkitkan di peringkat perbicaraan. Ia adalah satu ketidakadilan kepada pihak-pihak dan hakim mahkamah sesyen yang telah membuat dapatan berdasarkan keterangan-keterangan serta isu-isu dan hujahan yang dikemukakan semasa perbicaraan.

[10] Walau bagaimanapun dalam suatu rayuan sivil pendengaran suatu kes adalah dikatakan sebagai perbicaraan semula. Ini dinyatakan di bawah A 55 k 2 KKM 2012 seperti berikut:

> 2. Rayuan melalui pendengaran semula dengan notis
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> Semua rayuan ke Mahkamah Tinggi hendaklah dengan cara pendengaran semula dan hendaklah dibawa dengan memberikan suatu notis rayuan dalam empat belas hari dari tarikh keputusan itu dirayu.

[11] Ia juga dinyatakan di bawah s 29 Akta Mahkamah Kehakiman 1964 seperti berikut:

> 29 Civil appeals to be by way of re-hearing
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> All civil appeals from a subordinate court shall be by way of re-hearing, and the High Court shall have the like powers and jurisdiction on the hearing of appeals as the Court of Appeal has on the hearing of appeals from the High Court.

[12] Mahkamah Persekutuan telah menyatakan bahawa maksud pendengaran semula ialah mahkamah yang mendengar rayuan boleh membuat apa-apa perintah penghakiman yang diberikan oleh mahkamah bicara. Ini telah dinyatakan dalam kes *Government of Malaysia v Zainal bin Hashim* [1977] 2 MLJ 254b di mana YAA Suffian Ketua Hakim Negara menyatakan seperti berikut:

> Appeals to this court are by way of rehearing and we may give any judgment, make any order which oughtto have been given or made (by the trial court and make such further or other orders as the case requires, s 69(1) and (4) of the Courts of Judicature Act No 7 of 1964). This means, on the authority of *Quilter v Mapleson* (1881–2) 9 QBD 672 that we are authorised to make such order on this appeal as

ought to be made according to the law as it stands not at the time of the trial but at the time of this appeal.

[13] Ia turut dinyatakan sebelum ini oleh Mahkamah Rayuan di United Kingdom dalam kes *Quilter v Mapleson* (1882) 9 QBD 672 di mana Jessal MR menyatakan seperti berikut:

> Now, when we look at Order LVIII, rule 2, we find it provides hat 'All appeals to the Court of Appeal shall be by way of re-hearing.' On an appeal strictly so called, such a judgment can only be given as ought to have been given at the original hearing; but on a rehearing such a judgment may be given as ought to be given if the case came at that time before the court of first instance. This point often arose in the Court of Chancery where there was no strict appeal, but only a re-hearing before a superior court. It often happened that somebody had died before the rehearing, which made the title of one of the parties clear — the court on the re-hearing could have regard to that. So also the court could have regard to conduct which made an appeal improper. Then the fifth rule of the same order gives the Court of Appeal power to admit further evidence, and says, that 'The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require'. It was, in my opinion, intended to give appeals the character of rehearings, and to authorize the Court of Appeal to make such order as ought to be made according to the state of things at the time.

[14] Mahkamah ini berpendapat adalah wajar dengan tujuan melengkapkan penghakiman kes rayuan ini untuk meneliti ujian kontrak perkhidmatan (*contract of service*) dan kontrak untuk perkhidmatan (*contract for service*), walaupun ia tidak mempunyai kaitan langsung dengan prinsip pendengaran semula dalam rayuan sivil ini.

[15] Penentuan sama ada seseorang itu adalah pekerja bagi maksud Akta Kerja 1955 ataupun Akta Perhubungan Perusahaan 1967 adalah penting bagi menentukan sama ada seseorang itu layak untuk mendapatkan remedi dan perlindungan yang disediakan di bawah Akta Kerja 1955 atau Akta Perhubungan Perusahaan 1967. Ianya tidak berkaitan dalam kes ini. Mahkamah Persekutuan dalam kes *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369 di mana YA Gopal Sri Ram menyatakan bahawa:

> In our judgment, the correct test to be applied in determining whether a claimant is a workman under the Act is that enunciated by Chang Min Tat FCJ in *Dr A Dutt v Assunta Hospital* [1981] 1 MLJ 304 at p 311. We accordingly hold that a workman under the Act is one who is engaged under a contract of service. An independent contractor who is engaged under a contract for services is not a workman under the Act. We take this view because it provides, as earlier observed, for a flexible approach to the determination of the question. It is fairly plain to see why flexibility is achieved by having resort to this test.

[16] Selain daripada kes *Dr A Dutt v Assunta Hospital* [1981] 1 MLJ 304, terdapat satu keputusan yang diputuskan oleh Mahkamah Persekutuan iaitu *Inchcape Malaysia Holdings Bhd v RB Gray & Anor* [1985] 2 MLJ 297 yang mana kes itu telah tidak diikuti oleh kes *Hoh Kiang Ngan* tersebut. Itu bermakna bahawa ujian bagi menentukan sama ada pekerja itu adalah kontrak perkhidmatan (*contract of service*) atau kontrak untuk perkhidmatan (*contract for service*) itu adalah berdasarkan kepada kes *Dr A Dutt v Assunta Hospital* yang menyatakan bahawa:

> As noted earlier, the contract of service provided for termination by either side by three months' notice. It is the case for the Hospital that having given this contractual notice, the termination of the service is not a dismissal, certainly not a dismissal without just cause or excuse and it does not give rise to a claim for reinstatement or for compensation, there being, it is claimed, nothing in the Act to prohibit a termination according to the contract.

[17] Ia juga dinyatakan dalam kes *Mary Colete John v South East Asia Insurance Bhd* [2010] 6 MLJ 733.

PENAMATAN KONTRAK PEKERJAAN

[18] Hakim mahkamah sesyen dalam alasan penghakimannya menyatakan bahawa disebabkan tiadanya terma yang jelas dalam kontrak pekerjaan yang menyatakan tatacara penamatan kontrak oleh pekerja iaitu plaintif dalam kes ini maka tindakan defendan meninggalkan pekerjaan beliau secara tiba-tiba tidak membolehkan diputuskan terdapatnya pemecahan kontrak oleh defendan. Ini menyebabkan plaintif tidak mempunyai remedi atau boleh mendapatkan ganti rugi daripada defendan.

[19] Adakah dapatan hakim mahkamah sesyen tersebut adalah tepat dan tidak wajar untuk diganggu oleh mahkamah ini? Ini adalah disebabkan hakim mahkamah sesyen hanya berdasarkan kepada terma-terma yang terdapat dalam perjanjian pekerjaan tersebut mahkamah yang mentafsirkan suatu kontrak tidak wajar untuk memasukkan terma-terma yang tidak terdapat dalam sesuatu perjanjian. Ini telah ditegaskan oleh Mahkamah Persekutuan dalam kes *Sumbangan Aneka Sdn Bhd v KNK Development Sdn Bhd & Ors* [2021] 4 MLJ 514:

> [39] *To summarise, what we have decided above basically is to give effect to what the parties themselves have agreed in their agreements as to the particular event that gives rise to the right to terminate and the consequences following such termination. In this regard it is pertinent to reproduce what was held by the House of Lords in Trollope and Colls Ltd v North West Metropolitan Regional Hospital Board* [1973] 1 WLR 601 which was quoted by this court in *SPM Membrane Switch Sdn Bhd v Kerajaan Negeri Selangor* [2016] 1 MLJ 464:
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> The court does not make a contract for the parties. The court will not even

> improve the terms which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. if the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been suitable. An unexpressed term can be implied if and only if courts finds that the parties must have intended that term to form part of their contract.

[20] Adakah adil untuk seseorang pekerja meninggalkan pekerjaannya tanpa memaklumkan kepada majikannya sehingga boleh menjejaskan operasi syarikat. Ia adalah lebih penting sekiranya pekerja tersebut adalah merupakan nadi utama kepada perjalanan syarikat tersebut. Penelitian kepada perjanjian pekerjaan antara plaintif dan defendan menunjukkan terdapat terma penamatan kontrak oleh majikan. Namun tiada peruntukan yang sama terhadap pekerja. Dalam erti kata lain pekerja boleh menamatkan perkhidmatan tanpa sebarang notis atau maklumat berkenaan dengan penamanatan kontrak tersebut kepada pihak majikan. Apa yang jelas ialah terma-terma tersebut telah dipersetujui oleh kedua-dua pihak. Ia sewajarnya dikuatkuasakan.

[21] Walau bagaimanapun dalam undang-undang kontrak terdapat dua bentuk terma kontrak iaitu terma nyata (*express term*) dan terma tersirat (*implied term*).

[22] Hakikat terma tersirat dalam suatu kontrak telah dijelaskan oleh Mahkamah Persekutuan secara jelas dalam kes *Sababumi (Sandakan) Sdn Bhd v Datuk Yap Pak Leong* [1998] 3 MLJ 151. YA Hakim Peh Swee Chin Hakim Mahkamah Persekutuan menyatakan seperti berikut:

> Implied terms are of three types. The first and most important type is an implied term which the court infers from evidence that the parties to a contract must have intended to include it in the contract though it has not been expressly set out in the contact. The implied term contended for in this appeal belongs to this type and much more about this later.
>
> The second type of implied term is one by operation of law, and not based on the inference just explained. By operation of law, I mean that a large number of specific implied terms have been held in to arise from previous decided cases on certain specific facts. Such ratio decidendi in respect of such decided implied terms are normally adopted by courts in subsequent cases on similar facts as a matter of course without the necessity of any court to decide afresh whether it ought to draw the inference as explained above. Thus, such implied terms come from decided cases exclusively. Thus, in a contract of employment, there is an implied term that the employee will serve his employer faithfully, and not to act against the employer's interest, and again there is another implied term that the employer will provide a safe system of work. Many of such decided and specific implied terms have been

incorporated into statutes such as the Sale of Goods Act 1957 and others; it is not necessary to discuss it further except to emphasize that such an implied term of this particular type may sometimes be excluded by parties by an agreement to the contrary and more importantly, it is not dependent on the court having to draw an inference explained above.

The third kind of an implied term is one that is implied by custom or usage of any market or trade which is reasonable, and again it is not dependent on a court's inference explained above but by virtue of such a custom or usage from the market or trade. Interestingly, s 92(e) the Evidence Act 1950 seems to be custom-made to provide logistical support for this particular type of implied term. It will be remembered that s 92(e) aforesaid is one of the exceptions to the rule against evidence to contradict or vary any terms of a written contract.

Reverting to the first type of implied term which is dependent on a court drawing an inference as explained above, there are two tests to fix the parties with such an intention, ie that the parties must have intended to include such an implied term in the contract. The first test is a subjective test, as stated by MacKinnon LJ in *Shirlaw v Southern Foundries Ltd (1926)* [1939] 2 KB 206 at p 227, that such a term to be implied by a court is 'something so obvious that it goes without saying, so that if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in the agreement, they would testily suppress his with a common 'Oh, of course'.

The second test is that the implied term should be of a kind that will give business efficacy to the transaction of the contract of both parties. The test was described by Lord Wright in *Luxor (Eastbourne) Ltd & Ors v Cooper* [1941] AC 108 at p 137, that in regard to an implied term, '... it can be predicated that 'It goes without saying', some term not expressed but necessary to give the transaction such business efficacy as the parties must have intended'. Business efficacy in my opinion, simply means the desired result of the business in question. Thus, in *Shirlaw*'s case, Shirlaw who was appointed the managing director by the defendant company for ten years, sued for and obtained damages for breach of agreement. It was held that it was an implied term that the defendant company would not alter its articles of association to create a right for itself to remove the plaintiff before the ten year term expired. The implied term inferred by the court there was to let both parties achieve the desired result that the post of the managing director would continue to be available for ten years to Shirlaw as both parties must have intended it at the time when making the agreement.

The testy answer to the question of the officious bystander of 'Oh, of course' spoken of by Mackinnon LJ was described equally elaborately by Scrutton LJ in *Reigate v Union Manufacturing Co (Ramsbottom) Ltd & Anor* [1918] 1 KB 592 at p 605 as '... of course, so and so will happen, we did not trouble to say that, it is too clear'.

Both tests in my opinion must be satisfied before a court infers an implied term. Thus, *Lord Wilberforce in Liverpool City Council v Irwin & Anor* [1977] AC 239 at p 254 spoke of an implied term as a matter of necessity, so that the element of 'business efficacy is inseparable'. Lord Simon of Glaisdale in *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 16 ALR 363 described both tests as conditions the compliance of which the court must be satisfied, in addition to what I may describe as other requirements, of existing law. Closer to home,

Chong Siew Fai J (as he then was) in *Yap Nyo Nyok v Bath Pharmacy Sdn Bhd* [1993] 2 MLJ 250 held that both tests must be satisfied. If the implied term was not necessary to give business efficacy, the answer to the officious bystander, would have been a testy answer of 'Oh, don't talk rubbish'.

The two tests referred to earlier are to enable the court to decide as to whether it should or should not infer that the implied term contended for is a term which parties to a contract must have intended to include in the contract. Such being the case, the intention of both parties from the contract in question ought to be ascertained. In doing so, I will not set out the evidence below in detail except to refer to such parts of it as and when necessary, as after all, this matter is not likely at all to go elsewhere from this court, as long as the parties and their counsel and the courts below are apprised of detailed facts.

[23] Sebelum itu dalam kes *Pasuma Pharmacal Corpn v Mcalister & Co Ltd* [1965] 1 MLJ 221 Mahkamah Persekutuan juga telah menjelaskan berkenaan dengan terma tersirat yang terdapat dalam perjanjian yang melibatkan urusan perniagaan dengan menyatakan seperti berikut:

It clearly contemplated a course of dealing between the parties for at least five years. During that period McAlisters were to buy from Pasuma all the chicken essence they could sell and they were to sell it under their 'Apollo' trade mark, but they were not to sell it outside the area covered by the agreement. On the other hand Pasuma were not to sell chicken essence to anybody in that area except McAlisters. There was a provision, under which the amortization agreement was later made, by which Pasuma undertook to replace any defective stock supplied by them. McAlisters were to advertise the stuff continuously and Pasuma were to assist with the cost of this advertising.

In the circumstances it is difficult to resist the conclusion that there was an implied condition that in relation to their business as covered by the contract the parties should be reasonably honest and truthful with each other. It may well be that in the words of Sir William James in the case of *Panama and South Pacific Telegraph Co v India Rubber Gutta Percha and Telegraph Works Co* LR 10 Ch App 515 526, 'the clearer a thing is, the more difficult it is to find any express authority or any dictum exactly to the point'.

[24] Namun demikian terma tersirat tersebut tidak boleh sesuatu yang bercanggah dengan persetujuan pihak-pihak dalam sesuatu kontrak. Ia haruslah dapat mengesahkan bahawa dengan terma tersirat tersebut ia akan membolehkan atau bersesuaian dengan kecekapan perniagaan dalam sesuatu perjanjian tersebut. Ini telah dinyatakan oleh Majlis Privy dalam kes Attorney General of *Attorney General of Belize and others v Belize Telecom Ltd and another* [2009] 1 WLR 1988 seperti berikut:

16 Before discussing in greater detail the reasoning of the Court of Appeal, the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot

introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912–913. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument.

17 The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.

18 In some cases, however, the reasonable addressee would understand the instrument to mean something else. He would consider that the only meaning consistent with the other provisions of the instrument, read against the relevant background, is that something is to happen. The event in question is to affect the rights of the parties. The instrument may not have expressly said so, but this is what it must mean. In such a case, it is said that the court implies a term as to what will happen if the event in question occurs. But the implication of the term is not an addition to the instrument. It only spells out what the instrument means.

19 The proposition that the implication of a term is an exercise in the construction of the instrument as a whole is not only a matter of logic (since a court has no power to alter what the instrument means) but also well supported by authority. In *Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board* [1973] 1 WLR 601, 609 Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:

> the court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves.

20 More recently, in *Equitable Life Assurance Society v Hyman* [2002] 1 AC 408, 459, Lord Steyn said: 'If a term is to be implied, it could only be a term implied from the language of [the instrument] read in its commercial setting'.

21 It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean. It will be noticed from Lord Pearson's speech that this question can be reformulated in various ways which a court may find helpful in providing an answer — the implied term must 'go without saying', it must be 'necessary to give business efficacy to the contract' and so on — but these are not in the Board's opinion to be treated as different or additional tests. There is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?

22 There are dangers in treating these alternative formulations of the question as if they had a life of their own. Take, for example, the question of whether the implied term is 'necessary to give business efficacy' to the contract. That formulation serves to underline two important points. The first, conveyed by the use of the word 'business', is that in considering what the instrument would have meant to a reasonable person who had knowledge of the relevant background, one assumes the notional reader will take into account the practical consequences of deciding that it means one thing or the other. In the case of an instrument such as a commercial contract, he will consider whether a different construction would frustrate the apparent business purpose of the parties. That was the basis upon which *Equitable Life Assurance Society v Hyman* [2002] 1 AC 408 was decided. The second, conveyed by the use of the word 'necessary', is that it is not enough for a court to consider that the implied term expresses what it would have been reasonable for the parties to agree to. It must be satisfied that it is what the contract actually means.

23 The danger lies, however, in detaching the phrase 'necessary to give business efficacy' from the basic process of construction of the instrument. It is frequently the case that a contract may work perfectly well in the sense that both parties can perform their express obligations, but the consequences would contradict what a reasonable person would understand the contract to mean. Lord Steyn made this point in the *Equitable Life* case, at p 459, when he said that in that case an implication was necessary 'to give effect to the reasonable expectations of the parties'.

24 The same point had been made many years earlier by Bowen LJ in his well known formulation in *The Moorcock* (1889) 14 PD 64, 68:

> In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men ...

25 Likewise, the requirement that the implied term must 'go without saying' is no more than another way of saying that, although the instrument does not expressly say so, that is what a reasonable person would understand it to mean. Any attempt to make more of this requirement runs the risk of diverting attention from the objectivity which informs the whole process of construction into speculation about what the actual parties to the contract or authors (or supposed authors) of the instrument would have thought about the proposed implication. The imaginary conversation with an officious bystander in *Shirlaw v Southern Foundries (1926) Ltd* [1939] 2 KB 206, 227 is celebrated throughout the common law world. Like the phrase 'necessary to give business efficacy', it vividly emphasises the need for the

court to be satisfied that the proposed implication spells out what the contact would reasonably be understood to mean. But it carries the danger of barren argument over how the actual parties would have reacted to the proposed amendment. That, in the Board's opinion, is irrelevant. Likewise, it is not necessary that the need for the implied term should be obvious in the sense of being immediately apparent, even upon a superficial consideration of the terms of the contract and the relevant background. The need for an implied term not infrequently arises when the draftsman of a complicated instrument has omitted to make express provision for some event because he has not fully thought through the contingencies which might arise, even though it is obvious after a careful consideration of the express terms and the background that only one answer would be consistent with the rest of the instrument. In such circumstances, the fact that the actual parties might have said to the officious bystander 'Could you please explain that again?' does not matter.

[25] Pemakaian terma tersirat dalam suatu kontrak adalah mempunyai hubung kait dengan jenis kontrak yang terlibat. Ini telah ditegaskan oleh Mahkamah Agong di United Kingdom dalam kes *Geys v Société Générale, London Branch* [2013] 1 AC 523 seperti berikut:

56 A great deal of the contractual relationship between employer and employee is governed by implied terms of the latter kind. Some are of long-standing, such as the employer's duty to provide a safe system of work. Some are of more recent discovery, such as the mutual obligations of trust and confidence. This was referred to by Dyson LJ in *Crossley v Faithful & Gould Holdings Ltd* [2004] ICR 1615 as an 'evolutionary process'. He also described the 'necessity' involved in implying such terms as 'somewhat protean', pointing out that some well established terms could scarcely be said to be essential to the functioning of the relationship. At para 36, he said:

> It seems to me that, rather than focus on the elusive concept of necessity, it is better to recognise that, to some extent at least, the existence and scope of standardised implied terms raise questions of reasonableness, fairness and the balancing of competing policy considerations.

There is much to be said for that approach, given the way in which those terms have developed over the years.

57 Whatever the test to be applied, it seems to me to be an obviously necessary incident of the employment relationship that the other party is notified in clear and unambiguous terms that the right to bring the contract to an end is being exercised, and how and when it is intended to operate. These are the general requirements applicable to notices of all kinds, and there is every reason why they should also be applicable to employment contracts. Both employer and employee need to know where they stand. They both need to know the exact date upon which the employee ceases to be an employee. In a lucrative contract such as this one, a good deal of money may depend upon it. But even without that, there may be rights such as life and permanent health insurance, which depend upon continuing to be in employment. In some contracts there may also be private health insurance. A person such as the claimant, going on holiday over Christmas and the New Year, needs to

know whether he should be arranging these for himself. At the other end of the scale, an employee who has been sacked needs to know when he will become eligible for state benefits.

[26] Perbincangan berkaitan isu terma tersirat ini juga telah dinyatakan dengan menarik oleh Mahkamah Agong di United Kingdom dalam kes *Barton v Morris and another (in place of Gwyn Jones, decd)* [2023] AC 684.

[27] Pemakaian terma tersirat dalam perjanjian pekerjaan dapat dilihat telah dinyatakan dalam kes *Mahmud v BCCI SA (in liq); Malik v BCCI SA (in liq)* [1998] AC 20. Dalam kes tersebut dua orang pengurus bank telah memohon kepada mahkamah untuk menguatkuasakan terma tersirat terhadap majikan iaitu tindakan bank menjalankan urus niaga yang bercanggah dengan undang-undang telah memecahkan perhubungan kerahsiaan dan amanah di antara pekerja dan majikan. Dalam kes tersebut Lord Nicholls of Birkenhead telah menyatakan terdapat terma tersirat di antara pekerja dan majikan dengan menyatakan seperti berikut:

> Two points can be noted here. First, as a matter of legal analysis, the innocent employee's entitlement to leave at once must derive from the bank being in breach of a term of the contract of employment which the employee is entitled to treat as a repudiation by the bank of its contractual obligations. That is the source of his right to step away from the contract forthwith.
>
> In other words, and this is the necessary corollary of the employee's right to leave at once, the bank was under an implied obligation to its employees not to conduct a dishonest or corrupt business. This implied obligation is no more than one particular aspect of the portmanteau, general obligation not to engage in conduct likely to undermine the trust and confidence required if the employment relationship is to continue in the manner the employment contract implicitly envisages.
>
> Second, I do not accept the liquidators' submission that the conduct of which complaint is made must be targeted in some way at the employee or a group of employees. No doubt that will often be the position, perhaps usually so. But there is no reason in principle why this must always be so. The trust and confidence required in the employment relationship can be undermined by an employer, or indeed an employee, in many different ways. I can see no justification for the law giving the employee a remedy if the unjustified trust-destroying conduct occurs in some ways but refusing a remedy if it occurs in others. The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances.'

[28] YA hakim juga telah menjelaskan berkenaan dengan bagaimanakah pemecahan terma tersirat tersebut boleh berlaku dengan menjelaskan seperti berikut:

> The objective standard just mentioned provides the answer to the liquidators' submission that unless the employee's confidence is actually undermined there is no breach. A breach occurs when the proscribed conduct takes place: here, operating a dishonest and corrupt business. Proof of a subjective loss of confidence in the employer is not an essential element of the breach, although the time when the employee learns of the misconduct and his response to it may affect his remedy.

[29] Lord Hoffmann telah menjelaskan kedudukan terma tersirat dalam perjanjian pekerjaan dengan menarik dalam kes *Johnson v Unisys Ltd* [2003] 1 AC 518 seperti berikut:

> 35 My Lords, the first question is whether the implied term of trust and confidence upon which Mr Johnson relies, and about which in a general way there is no real dispute, or any of the other implied terms, applies to a dismissal. At common law the contract of employment was regarded by the courts as a contract like any other. The parties were free to negotiate whatever terms they liked and no terms would be implied unless they satisfied the strict test of necessity applied to a commercial contract. Freedom of contract meant that the stronger party, usually the employer, was free to impose his terms upon the weaker. But over the last 30 years or so, the nature of the contract of employment has been transformed. It has been recognised that a person's employment is usually one of the most important things in his or her life. It gives not only a livelihood but an occupation, an identity and a sense of self-esteem. The law has changed to recognise this social reality. Most of the changes have been made by Parliament. The Employment Rights Act 1996 consolidates numerous statutes which have conferred rights upon employees. European Community law has made a substantial contribution. And the common law has adapted itself to the new attitudes, proceeding sometimes by analogy with statutory rights.
>
> 36 The contribution of the common law to the employment revolution has been by the evolution of implied terms in the contract of employment. The most far reaching is the implied term of trust and confidence. But there have been others. For example, in *W A Goold (Pearmak) Ltd v McConnell* [1995] IRLR 516, Morison J (sitting in the Employment Appeal Tribunal) said that it was an implied term of the contract of employment that an employer would reasonably and promptly afford employees an opportunity to obtain redress of grievances. He inferred such a term from what is now s 3 of the Employment Rights Act 1996, which requires that an employee be provided with a written statement of the particulars of his employment, including a note of how he may apply if he has any grievances. So statute and common law have proceeded hand in hand.

[30] Pengiktirafan terma tersirat dalam perjanjian pekerjaan telah juga dinyatakan oleh Mahkamah Persekutuan dalam kes *Majlis Perbandaran Pulau Pinang v Lim Soo Seng* [1991] 1 MLJ 162 apabila memutuskan bahawa terdapat syarat tersirat dalam pekerjaan bahawa majikan menanggung rugi pemandunya dalam kemalangan yang menyebabkan kerugian atau kecederaan kepada pihak ketiga akibat daripada memandu secara cuai kenderaan majikannya adalah sesuatu yang tidak betul dan menyatakan seperti berikut:

A The only implied term in such a contract of employment as here is that the employer will insure the vehicle against third party risks which is a requirement of law. It does not follow that if the driver is sued separately he is entitled to be indemnified by his employer in a subsequent action.

B **[31]** Mahkamah ini perlu berhati-hati dalam meneliti kes-kes berkenaan terma tersirat yang diputuskan di United Kingdom. Ini adalah disebabkan ianya diputuskan dalam kerangka undang-undang kontrak di United Kingdom di mana terdapat beberapa peruntukan undang-undang yang berbeza dengan undang-undang kontrak di Malaysia. Oleh itu mahkamah ini C perlu memberi perhatian kepada Akta Kontrak 1950 dan keputusan-keputusan mahkamah di Malaysia yang menjelaskan berkenaan dengan terma tersirat sebagai suluh panduan dalam menentukan sama ada ianya terpakai dalam kes ini.

D **[32]** Berdasarkan kepada penilaian berkenaan dengan terma tersirat yang telah digunakan oleh mahkamah dalam mentafsirkan sesuatu terma kontrak dalam kes ini mahkamah berpendapat ketiadaan terma berkenaan penamatan kontrak pekerjaan oleh pekerja dalam kes ini mewajarkan terma tersirat E digunakan. Ini adalah disebabkan adalah sesuatu yang tidak munasabah untuk terma penamatan hanya dikenakan kepada majikan. Ia akan menyebabkan seseorang pekerja akan secara sewenang-wenangnya meninggalkan pekerjaan sehingga menjejaskan perjalanan perniagaan majikannya yang tidak membolehkan majikan memperolehi apa-apa remedi apa-apa tindakan F pekerjanya. Mahkamah ini berpendapat terma tersirat dalam kes ini tergolong dalam jenis ketiga seperti yang dinyatakan dalam kes *Sababumi (Sandakan) Sdn Bhd*. Adalah tidak munasabah untuk mahkamah tidak mengguna pakai terma tersirat dalam mentafsirkan kontrak di antara plaintif dan defendan.

G **[33]** Adalah tidak dapat dinafikan di dalam kontrak pekerjaan tersebut terdapat peruntukan di fasal 7 bahawa pekerja boleh menamatkan kontrak pekerjaan tersebut sebelum tamat tempoh sekiranya terdapat tindakan-tindakan majikan yang tidak betul. Notis satu bulan perlu diberikan kepada majikan untuk memperbaiki perkara yang tidak betul tersebut selepas H tempoh idah satu bulan tersebut luput maka bolehlah pekerja meninggalkan pekerjaan tersebut walaupun tempoh masa kontrak pekerjaan tersebut masih belum luput.

[34] Dalam kes ini keterangan menunjukkan bahawa defendan mendapati I tingkah laku majikannya yang dikatakan melakukan tindakan-tindakan yang tidak wajar kepada pekerja-pekerja lain telah menjadi alasan defendan untuk meninggalkan pekerjaan tersebut. Namun begitu tiada keterangan yang menunjukkan bahawa tempoh satu bulan telah diberikan kepada majikan untuk memperbetulkan kesilapan-kesilapan tersebut. Malahan tiada juga

keterangan yang menunjukkan defendan ada mengambil tindakan dengan melaporkan tindakan-tindakan yang tidak betul oleh majikannya itu kepada pihak berkuasa untuk diambil tindakan mengikut undang-undang.

[35] Selain daripada itu mahkamah juga mendapati peranan defendan sebagai pekerja di syarikat plaintif adalah penting. Ia seolah-olah sebagai nadi utama kepada operasi syarikat. Tindakan defendan meninggalkan pekerjaan di syarikat plaintif secara tiba-tiba telah menjejaskan kegiatan perniagaan plaintif. Kepentingan pekerjaan defendan dalam syarikat plaintif dapat dilihat melalui fasal 2 perjanjian tersebut. Ia juga dapat dilihat melalui penyata tuntutan plaintif berkenaan dengan kesan daripada tindakan defendan yang jelas menunjukkan bahawa ia menjejaskan perniagaan plaintif yang tidak dapat disanggah oleh pihak defendan.

[36] Dalam hal ini mahkamah perlu berhati-hati semasa meneliti keterangan-keterangan saksi-saksi. Ini adalah disebabkan mahkamah ini tidak berpeluang melihat saksi-saksi semasa memberi keterangan. Ianya dapat dinikmati oleh hakim bicara. Oleh itu dapatan hakim mahkamah sesyen tidak boleh dengan sewenang-wenangnya diketepikan oleh mahkamah ini semata-mata disebabkan tidak berpuas hati dengan dapatan hakim mahkamah sesyen tersebut. Persoalannya, adakah dalam kes ini disebabkan hakim mahkamah sesyen tidak menggunakan terma tersirat dalam mentafsirkan perjanjian pekerjaan tersebut membolehkan mahkamah ini campur tangan dalam dapatan hakim mahkamah sesyen tersebut.

[37] Pada hemat mahkamah adalah mustahak untuk hakim bicara semasa mentafsirkan apa-apa kontrak di antara pihak-pihak di hadapan mahkamah meneliti dengan mendalam terma-terma kontrak dan prinsip-prinsip undang-undang kontrak termasuklah terma nyata, terma tersirat dan Akta Kontrak 1950 itu sendiri bagi melihat sama ada terdapat sebarang pemecahan terma kontrak atau perlanggaran mana-mana peruntukan di bawah Akta Kontrak 1950 sehingga menyebabkan kontrak tersebut adalah terbatal dan tidak boleh dilaksanakan. Penelitian yang mendalam berkenaan perkara-perkara tersebut boleh mengelakkan daripada hakim bicara tersalah arah sehingga membuat dapatan-dapatan yang tidak boleh dipertahankan di bawah prinsip-prinsip undang-undang kontrak dan Akta Kontrak 1950.

[38] Begitu juga pihak-pihak sewajarnya mengemukakan keterangan-keterangan berkenaan dengan kontrak tersebut dan sekiranya terdapat dakwaan berlakunya pemecahan kontrak perlu dikemukakan keterangan dan menunjukkan terdapatnya perlanggaran prinsip-prinsip undang-undang kontrak, pemakaian prinsip-prinsip tafsiran kontrak dan ketidakpatuhan kepada Akta Kontrak 1950. Pada hemat mahkamah ketelitian mahkamah dan para peguam dalam mengemukakan keterangan-keterangan

dan hujahan dan rujukan kepada undang-undang yang tepat boleh membantu pihak plaintif dan defendan mendapatkan keadilan yang sewajarnya dalam sistem pentadbiran keadilan sivil. Kegagalan pihak-pihak untuk menjalankan amanah yang diharapkan boleh menyebabkan pihak-pihak menemui kegagalan dalam usaha mencari keadilan melalui sistem perundangan sivil.

[39] Dalam kes ini mahkamah berpendapat bahawa tindakan defendan menamatkan kontrak pekerjaan tersebut secara tiba-tiba adalah suatu tindakan yang telah berlawanan dengan terma tersirat dalam kontrak pekerjaan tersebut.

[40] Dalam kes ini setelah mempertimbangkan kontrak pekerjaan di antara plaintif dan defendan serta tindakan defendan yang meninggalkan pekerjaannya secara tiba-tiba serta kerumitan yang perlu dihadapi oleh plaintif, mahkamah berpendapat adalah wajar untuk menentukan ganti rugi bagi pemecahan kontrak tersebut. Setelah menimbangkannya mahkamah berpendapat kadar sebanyak RM105,000 adalah adil dan munasabah untuk diberikan kepada plaintif.

[41] Sementara itu berkenaan dengan tuntutan ganti rugi kehilangan peralatan dan tuntutan-tuntutan lain mahkamah berpendapat hakim mahkamah sesyen telah mempertimbangkan dengan sewajarnya dan berpuas hati bahawa pihak plaintif tidak dapat membuktikannya di mahkamah. Mahkamah ini tidak mempunyai alasan untuk campur tangan dengan dapatan hakim mahkamah sesyen berkenaan perkara-perkara tersebut.

[42] Berdasarkan kepada alasan-alasan di atas dan juga analisis yang ringkas di atas mahkamah memutuskan bahawa rayuan perayu dibenarkan sebahagian di mana perintah hakim mahkamah sesyen digantikan dengan perintah bahawa responden membayar kepada perayu sebanyak RM105,000. Sementara perintah-perintah lain yang diberikan oleh hakim mahkamah sesyen itu dikekalkan dengan kos sebanyak RM15,000 tertakluk kepada fi alokator.

Sebahagian rayuan dibenarkan.

Dilaporkan oleh Nabilah Syahida Abdullah Salleh